

REMARKS

Claims 3, 9, 12 and 14 have been cancelled (Claim 7 was previously canceled). Claims 1-2, 4-6, 8, 10-11, 13 and 15-16 have been amended. Claims 17-20 have been added. Accordingly, Claims 1-2, 4-6, 8-11, 13 and 15-20 remain pending in this application.

Claims Objection

Claims 4-5 have been amended to correct the informality cited by the Examiner. Namely, the "a)" paragraph designation has been deleted from Claims 4-5. Thus, the objection to Claims 4-5 should be withdrawn.

Section 112 Rejections

In the present Office Action, Claims 5 and 9-14 were rejected under 35 U.S.C. 112 as being indefinite. Namely, Claims 5, 9 and 11 lack antecedent basis for "the outside edge", "a first segment and a second segment" and "said first hinged joint", respectively. Claims 12 and 14 were rejected for pertaining to an embodiment not capable of performing the embodiment of the parent Claim 6. Accordingly, Claims 5 and 11 have been amended to provide proper antecedent basis and Claims 9, 12 and 14 have been cancelled. Thus, the rejection of Claims 5, 9 and 11 should be withdrawn.

On the merits, Claims 1-6 and 8-16 were rejected under 35 U.S.C. 103(a) as being unpatentable over Pool.

Claim 1

Claim 1, as now presented, includes an actuator for rotating at least one of the first segment and the second segment around the hinge. The actuator element was originally presented in Claims 3 which is dependent on the parent Claim 1. However, Claim 3 has been cancelled and the actuator element of Claim 3 is now presented with Claim 1.

The Examiner conceded that Pool does not disclose or suggest a hinged connection as presented in Claim 1 and cited Meharry to cure this deficiency. However, the Examiner did not explicitly reject the actuator element, as now presented in Claim 1. The Examiner merely stated that a hinged connection can be moved into position by any well known means such as a hydraulic actuator (page 5, lines 2-4 of the Office Action of August 14, 2003). The Examiner failed to provide any evidence of anticipation of the actuator element used in combination with a hinged connection for an outfeed section of an unloading auger. Neither Pool nor Meharry, singly or combined, teaches or suggests the actuator element as claimed. Thus, the Examiner's rejection of the actuator element is flawed and improper due to the use of impermissible hindsight-based obviousness.

In the present patent application, the Examiner has used a hindsight-based obviousness test in the Section 103(a) rejection which has been rejected soundly and repeatedly by the Federal Circuit. As a defense against such hindsight-based obviousness allegations by an examiner, the Federal Circuit has insisted on the existence of a valid reason to make the combination. What the Examiner did in the Section 103(a) rejection

(of Claim 3, now presented in Claim 1) is to use the highly innovative and novel solution taught by the Applicant as a blueprint, with the Pool reference as the main structural diagram, the Meharry reference for the hinge element present in the claim but missing from the primary reference and the assertion that the actuator is a well known means for moving the hinged connection. This is impermissible, as the Federal Circuit has noted in case after case. "Defining the problem in terms of its solution reveals improper hindsight in the selection of the prior art relevant to obviousness." *Monarch Knitting Mach. Corp. v. Sulzer Morat GmbH*, 139 F.3d 877, 880, 45 USPQ2d 1977, 1981 (Fed. Cir. 1998).

The proper analysis is whether there is something in one of the prior art references which are being combined which suggests the combination, and in the Section 103(a) rejection based on Pool and Meharry, the Examiner failed to find such a teaching or suggestion supporting the combination. The Examiner's Section 103(a) rejection is textbook example of improper combination of prior art references, saying little more than that it was obvious to make the combinations because the combinations were obvious.

Perhaps even more fundamentally, the Section 103(a) rejection (of Claim 3, now presented in Claim 1) on the combination of the Pool and Meharry references fails to teach the claimed invention.

In view of the distinctions noted and the advantages attendant thereto, it is respectfully submitted that Claim 1, as now presented, distinguishes over Pool and

Meharry and is believed to be patentable thereover. Claims 2 and 4-5, which are dependent upon Claim 1, are believed to be patentable along with parent Claim 1.

Claim 4

With regard to Claim 4, the Examiner stated that when one of the segment is in the storage position, grain is inherently prevented from being accidentally released (page 3, lines 16-19 of the Office Action of August 14, 2003). Applicants disagree because the outfeed section can operate with one segment or with the second segment in the storage position, meaning that the auger does not have to stop operating when the second segment is in the storage position. Although the storage position is used to compactly store the combine, the storage position does not necessitate "a stop" operation for the auger. For example, the auger can still operate in a storage position if the "work" necessitate a shorter outfeed position. As can be seen, there may be applications in which the auger is operating in a "shorten" outfeed position (similar to a storage position). Thus, grain is not inherently prevented from being accidentally released in a storage position.

Further, the arguments pertaining to the flaw in the Section 103(a) rejection of Claim 3 (now presented as Claim 1) equally apply to the Section 103(a) rejection of Claim 4. In brief, Applicant respectfully submits that the Examiner used impermissible hindsight-based obviousness in the Section 103(a) rejection of Claim 4. The Examiner merely stated that the prevention of grain from being released in a storage position is

inherent and failed to cite any evidence of anticipation of this limitation. In fact, neither Pool nor Meharry, singly or combined, teaches or suggests the prevention of the accidentally release of grain.

In view of the distinctions noted and the advantages attendant thereto, it is respectfully submitted that Claim 4, distinguishes over Pool and Meharry and is believed to be patentable thereover. Claim 5, which is dependent on Claim 4, is believed to be patentable along with Claim 4.

Claim 6

Claim 6, as now presented, is generally similar to Claim 1 by reciting an actuator for rotating at least one of the first segment and the second segment around the hinge joint. Thus, Claim 6 distinguishes over Pool and Meharry for the reasons given above and is believed to be patentable thereover.

Claims 8, 10, 11, 13 and 16, which are dependent on Claim 6, are believed to be patentable along with the parent Claim 6.

New Claims

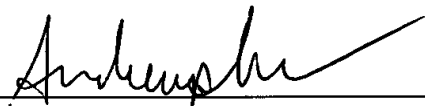
New Claim 17 is generally similar to Claims 1 and 4 by reciting a safety mechanism for preventing the crop material from spilling out when the auger is in the storage position. The safety mechanism of Claim 17 is generally similar to the limitation presented in Claim 4 and thus, the arguments for Claim 4 equally apply to Claim 17.

Further, neither Pool nor Meharry, singly or combined, teaches or suggests the safety mechanism of Claim 17. Thus, Claim 17 distinguishes over Pool and Meharry and is believed to be patentable thereover.

Claims 18-20, which are dependent on Claim 17, are believed to be patentable along with the parent Claim 17.

In summary, Claims 1-2, 4-6, 8-11, 13 and 15-20 are believed to be allowable for the reasons given herein. Accordingly, these claims remain pending following entry of this Amendment, and are in condition for allowance at this time. As such, Applicants respectfully request entry of the present Amendment and reconsideration of the application, with an early and favorable decision being solicited. Should the Examiner believe that the prosecution of the application could be expedited, the Examiner is requested to call Applicants' undersigned representative at the number listed below.

Respectfully submitted:

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